

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENTRELL D. WELCH,

Plaintiff,

vs.

STATE OF NEVADA, et al.,

Defendants.

Case No. 3:20-CV-00113-RCJ-WGC

ORDER

Plaintiff filed a complaint *in forma pauperis* under 28 U.S.C. § 1915(a)(1), seeking damages from the state of Nevada, two state agencies, and two members of a foster family that raised him for part of his childhood. Plaintiff alleges that the foster family members sexually assaulted him and raises constitutional claims under 42 U.S.C. § 1983. The Magistrate Judge screened the complaint under § 1915(e) and recommended that the Court dismiss the case with prejudice for failure to state a claim, concluding that Nevada and the agencies “are not persons that may be sued under [§] 1983” and that foster family members are not state actors. (ECF No. 4 at 5.) This Court accepted the Magistrate Judge’s recommendation. (ECF No. 6.) Plaintiff appealed that order. (ECF No. 8.) The Ninth Circuit then remanded this case for the limited purpose of determining whether Plaintiff’s case should proceed *in forma pauperis* on appeal or if the Court

elects to “certif[y] in writing that [this appeal] is not taken in good faith.” § 1915(a)(3); (*accord* ECF No. 10).

If the entirety of an appeal is frivolous, then a court should elect to so certify. *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). A claim is “frivolous where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The law is well-settled against Plaintiff, so his claims cannot succeed. *See* 15 Am. Jur. 2d *Civil Rights* § 89 n.1 (2020) (“States and their administrative agencies are not ‘persons’ who can be held liable under § 1983”); *Ismail v. Cty. of Orange*, 693 F. App’x 507, 512 (9th Cir. 2017) (“Merely serving as a foster parent does not transform a private party into a state actor.”). Hence, this Court dismissed this case with prejudice upon initial screening without granting leave to amend and consequently finds that any appeal would not be taken in good faith.

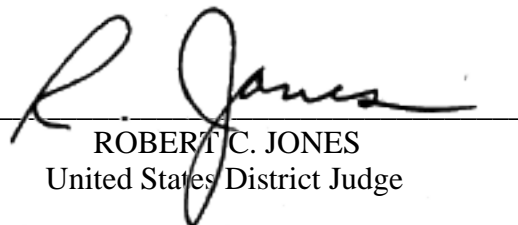
CONCLUSION

IT IS HEREBY ORDERED that this Court certifies that any appeal taken *in forma pauperis* would not be taken “in good faith” under 28 U.S.C. § 1915(a)(3).

IT IS FURTHER ORDERED that the clerk will serve this order to United States Court of Appeals for the Ninth Circuit.

IT IS SO ORDERED.

Dated June 15, 2020.


ROBERT C. JONES
United States District Judge